

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GEORGE EDWARD McCAIN, an individual,

Plaintiff,

vs.

CASE NO. 07-CV-5729 (JSR)

**AFFIRMATION OF JOHN W. PATTON,
JR.**

RAHAL LETTERMAN RACING, LLC, an Ohio limited liability co.; TIME, INC., a Delaware corporation d/b/a SPORTS ILLUSTRATED & PEOPLE MAGAZINE; GANNET CO., INC., a Delaware corporation d/b/a USA TODAY, PIONEER ELECTRONICS (USA), INC., a Delaware corporation; TOYOTA MOTOR SALES, U.S.A., INC., a California corporation; TABLE MOOSE MEDIA, LLC, an Indiana limited liability company d/b/a INDY MEN'S MAGAZINE; NORWALK FURNITURE CORPORATION, an Ohio corporation; F1 MARKETING GROUP, INC., a New York corporation; MOTORSPORT.COM, INC., a Florida corporation; BRIDGESTONE/FIRESTONE INC., an Ohio corporation; CONSUMER ELECTRONICS ASSOCIATION; AMERICAN HONDA MOTOR CO., INC., a Delaware corporation; WORLDWIDE PANTS INCORPORATED, a New York corporation; BOBBY RAHAL AUTOMOTIVE GROUP; LOGICALIS, INC., a New York corporation; THE TIMKEN COMPANY, an Ohio corporation; INTERNATIONAL MOTOR SPORTS ASSOC.; CRASH MEDIA GROUP, LTD., a foreign (U.K.) company; AMERICAN LE MANS SERIES LLC, a Georgia limited liability company; BEA SYSTEMS, INC., a Delaware corporation; GAWKER MEDIA LCC, a Delaware corporation; TIMES PUBLISHING COMPANY, a Florida corporation d/b/a ST. PETERSBURG TIMES; RACEFAN, INC., a corporation; HOWDEN MEDIA GROUP, a foreign (Canada)

company; NATIONAL LEDGER, LLC, an Arizona limited liability company; DANIEL VIELHABER d/b/a INDYMOTORSPEEDWAY.COM; SANDRA KINSLER d/b/a WOMANMOTORIST.COM; and ELLEN EMERSON d/b/a HONDABEAT.COM,

Defendants.

I John W. Patton, Jr. affirm:

1. I am a member of Pasternak, Pasternak & Patton, A Law Corporation ("PPP"), attorneys for Rahal Letterman Racing, LLC and Bobby Rahal Automotive Group, defendants herein. I submit this declaration in support of said defendants' Motion to Transfer Case, etc. ("Motion"). The facts set forth herein are of my own personal knowledge and if sworn I could and would testify competently thereto.

2. Rahal Letterman Racing, LLC, and Bobby Rahal Automotive Group move, pursuant to 28 U.S.C. section 1404(a), to transfer this copyright infringement action filed by plaintiff George Edward McCain ("McCain") to the Central District of California where a declaratory relief action litigating McCain's same copyright infringement claims (*Argent Mortgage Company, LLC, et al. v. Edward McCain*, Case No. SACV 06-749 CJC (RNBx) ("*Argent*")) has been pending since August 2006, the Honorable Cormac J. Carney, Judge Presiding. A true and correct copy of Argent Mortgage Company, LLC's and Team Rahal, Inc's Complaint for Declaratory Judgment of Non-Infringement instituting *Argent* is attached hereto as **Exhibit "A"** and by this reference incorporated herein.

3. Both this case and *Argent* involve the same issues of copyright infringement pertaining to the same copyright and the same or similar alleged acts of infringement. In this case, McCain alleges that defendants herein infringed his copyright by reproducing or allowing to be reproduced without McCain's permission photographs of which he is the copyright owner (the "Photographs") registered under # VAU-564-275 with the U.S. Copyright Office on November 29, 2002.

4. In *Argent*, plaintiffs Argent Mortgage Company, LLC ("Argent"), and Team Rahal, Inc. seek a declaratory judgment that they have not infringed McCain's copyright, the same copyright for the Photographs registered under # VAU-564-275 with the U.S. Copyright Office, that they did not authorize any third parties to use the Photographs, that they are not responsible for any such use, and that they are not liable for any alleged infringement of McCain's copyright by third parties.

5. Also in *Argent*, McCain answered and filed counterclaims against Team Rahal, Inc., "Rahal Letterman Racing, Inc." (which entity does not exist), Rahal Letterman Racing, LLC, and Argent, alleging that he is the copyright owner of the same Photographs registered with the U.S. Copyright Office under # VAU-564-275, and that counterclaim defendants Team Rahal, Inc., Rahal Letterman Racing, LLC, "Rahal Letterman Racing, Inc.", and Argent infringed his copyright for the Photographs by reproducing them or allowing them to be reproduced without McCain's permission. A true and correct copy of McCain's Answer to Complaint for Declaratory Relief and Counterclaims for Copyright Infringement filed in *Argent* is attached hereto as **Exhibit "B"** and by this reference incorporated herein. The acts of misuse alleged by McCain in *Argent* are the same or similar acts of misuse as alleged by McCain in this new action.

6. Counsel for McCain in *Argent* is the same attorney representing McCain in this action, John Pelosi ("Pelosi"), of Pelosi Wolf Efron & Spates LLP.

7. The claims in *Argent* and in this action involve the same Photographs and the same or similar alleged unauthorized publication or use of the Photographs.

8. On or about January 22, 2007, McCain, Argent and Team Rahal, Inc. filed a Joint Report Pursuant to Rule 26(f) in *Argent*. A true and correct copy of the Joint Report Pursuant to Rule 26(f) filed on or about January 22, 2007 in *Argent* is attached hereto as **Exhibit "C"** and by this reference incorporated herein. In the Joint Report Pursuant to Rule 26(f), McCain stated, *inter alia*, that "McCain does not reside in California, nor does he transact business in California. McCain may seek to transfer venue. McCain will likely move for summary judgment on the

claims for copyright infringement by Plaintiffs in the proper forum." (Joint Report Pursuant to Rule 26(f) (Exhibit "C"), at 3:20-23.)

9. On or about April 23, 2007, in *Argent*, the Court held a Scheduling Conference, at which the Court set a pretrial conference for July 14, 2008, and trial to commence on July 22, 2008. A true and correct copy of the Civil Minutes – General for the Scheduling Conference held in *Argent* on April 23, 2007 is attached hereto as **Exhibit "D"** and by this reference incorporated herein.

10. In or about May 2007 in *Argent*, McCain, Argent, and Team Rahal, Inc. participated in a meet-and-confer in which the parties agreed to the scheduling of all discovery and other case management matters, including settlement procedures, in *Argent*. A true and correct copy of the [Proposed] Stipulated Case Management Dates and Settlement Procedures executed on May 22, 2007 by counsel for all parties in *Argent*, including by Pelosi, counsel for McCain, is attached hereto as **Exhibit "E"** and by this reference incorporated herein.

11. McCain has responded to extensive written discovery in *Argent*. On or about May 25, 2007, McCain served "Plaintiff's [sic] Answer to Defendant's [sic] First Set of Requests for Admissions." A true and correct copy of Plaintiff's Answer to Defendant's First Set of Requests for Admissions served in *Argent* is attached hereto as **Exhibit "F"** and by this reference incorporated herein. On or about June 20, 2007, McCain served Defendant's Answer to Plaintiff's First Set of Interrogatories. A true and correct copy of Defendant's Answer to Plaintiff's First Set of Interrogatories served in *Argent* is attached hereto as **Exhibit "G"** and by this reference incorporated herein. Also on or about June 20, 2007, McCain served Defendant's Answer to Plaintiff's First Set of Requests for the Production of Documents, as well as documents produced therewith, including copies of the Photographs allegedly involved in the alleged infringements. A true and correct copy of Defendant's Responses to Plaintiff's First Set of Requests for the Production of Documents served in *Argent*, as well as documents produced therewith, including copies of the Photographs, is attached hereto as **Exhibit "H"** and by this reference incorporated herein. On or about June 29, 2007, McCain served Defendant's Answers to Plaintiff's Second Set

of Requests for Admissions. A true and correct copy of Defendant's Answer to Plaintiff's Second Set of Requests for Admissions served in *Argent* is attached hereto as **Exhibit "I"** and by this reference incorporated herein.

12. On or about June 8, 2007, McCain filed a "Notice of Voluntary Dismissal of Claims Against Rahal Letterman Racing, LLC Pursuant to F.R.C.P. Rule 41(a)." A true and correct copy of McCain's Notice of Voluntary Dismissal of Claims Against Rahal Letterman Racing, LLC Pursuant to F.R.C.P. Rule 41(a) filed on or about June 8, 2007 in *Argent* is attached hereto as **Exhibit "J"** and by this reference incorporated herein.

13. On or about June 14, 2007, McCain filed a "Notice of Voluntary Dismissal of Claims Against Rahal Letterman Racing, Inc. Pursuant to F.R.C.P. Rule 41(a)." A true and correct copy of McCain's Notice of Voluntary Dismissal of Claims Against Rahal Letterman Racing, Inc. Pursuant to F.R.C.P. Rule 41(a) filed on or about June 14, 2007 in *Argent* is attached hereto as **Exhibit "K"** and by this reference incorporated herein.

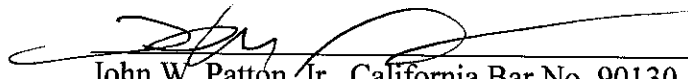
14. I have been communicating with several of the other defendants named by McCain in this action to ascertain whether any of them will join in this motion to transfer. Generally, I have received responses falling into two categories. Several defendants that had not yet been served when I contacted them stated that they do not oppose the transfer, but they were not inclined to join in the motion given that they had not yet been served with the complaint instituting this action. I understand that McCain was ordered to serve all defendants by July 24, 2007, the date of a status conference set by the Court. Several defendants were represented at the status conference by local New York counsel. Some attorneys present at the conference stated that their clients, who were just served with McCain's complaint, will review the motion to transfer and make a decision whether to join in the motion. Some defendants have stated that they will join in the motion to transfer.

15. On July 24, 2007, at the status conference before Judge Rakoff, Pelosi, McCain's attorney, mentioned that he had received a draft amended complaint in *Argent* from Argent's attorneys in connection with a proposed motion to amend the complaint being brought by Argent.

Pelosi further mentioned that the Rahal entities were also amending their claims in *Argent*, and that the proposed amended complaint added Mark Borchetta ("Borchetta"), Argent's agent who entered into the subject complaint in California with McCain, and further that, among other additional claims against McCain and Borchetta, the amended complaint added RICO claims. Counsel for the Rahal entities stated at the hearing on July 24, 2007 that they did not believe their clients were participating in Argent's motion to amend the complaint in *Argent*. On July 26, 2007, I received from Argent's counsel the motion for leave to file a first amended complaint, with an attached copy of the proposed first amended complaint. A true and correct copy of the proposed amended complaint is attached hereto as **Exhibit "L"** and by this reference incorporated herein. Argent's motion to amend the complaint in *Argent* is set for hearing before Judge Carney on August 27, 2007.

16. In addition, the Court will recall Pelosi's representations at the status conference that this is a clear-cut case of infringement and that the issue here is damages. (Indeed, the Court will recall that Pelosi claimed he felt compelled to file this New York action against some, but not all, of the alleged infringers because Argent and the Rahal entities consistently had denied any liability for their own supposed acts of infringement or for the infringements of third parties, the so-called "secondary infringers.") As the Court can see from the allegations of the proposed amended complaint (Exhibit "L" hereto), this is far from a clear-cut case of infringement by the Rahal entities, or, for that matter, Argent. There are substantial issues involving whether McCain has compromised Argent's agent, Borchetta, whether Borchetta breached his fiduciary duty, whether the two of them committed fraud, and whether they have deceived the parties as to the terms and scope of the contract for the use of the Photographs.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Affirmation was executed on July 27, 2007, at Los Angeles, California.



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Exhibit "A"

FILED

2006 AUG 15 AM 10:00
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

COPY

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20 Attorneys for Plaintiff
21 TEAM RAHAL, INC.

22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA

24 ARGENT MORTGAGE
25 COMPANY, LLC, a California
26 limited liability company; and
27 TEAM RAHAL, INC., an Ohio
28 Corporation,

Plaintiffs,

vs.

EDWARD MCCAIN, an individual,
Defendant.

Case No. SACV06-749 CSC (RNBx)

ARGENT MORTGAGE COMPANY,
ELC'S AND TEAM RAHAL, INC.'S
COMPLAINT FOR
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Argent Mortgage Company, LLC ("Plaintiff Argent") and Plaintiff Team Rahal, Inc. ("Plaintiff Team Rahal") (hereinafter collectively the "Plaintiffs"), for their Complaint for Declaratory Judgment in this action, allege as follows:

JURISDICTION AND VENUE

1
2 1. This is an action for declaratory judgment of non-infringement of
3 copyrights registered under United States Registration No. Vau-564-275. The
4 action arises under The Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and
5 2202, and the copyright laws of the United States, 17 U.S.C. § 101 et seq.

6 2. This Court has jurisdiction over this action pursuant to 28 U.S.C.
7 §§ 1331 and 1338.

8 3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a
9 substantial part of the events or omissions giving rise to the infringement claims of
10 Defendant Edward McCain ("Defendant") occurred in this judicial district. Further,
11 Defendant entered into an agreement related to the subject matter of the claims and
12 the copyrights of Registration No. Vau-564-275 in this judicial district.

THE PARTIES

13
14 4. Plaintiff Argent is a California limited liability company with its
15 principal place of business at 3 Park Plaza, 19th Floor, Irvine, California 92614.

16 5. Plaintiff Team Rahal is an Ohio corporation with its principal place of
17 business at 4601 Lyman Drive, Hilliard, Ohio 43026.

18 6. On information and belief, Defendant is a citizen of the United States
19 of America, having a place of business at 211 S. 4th Avenue, Tucson, Arizona
20 85701.

FACTS

21
22
23 7. Plaintiff Argent is one of the fastest-growing, wholesale mortgage
24 companies in the United States.

25 8. Plaintiff Team Rahal is a corporation established by three-time CART
26 champion Bobby Rahal to manage and operate an Indy Racing Team.

27 ///

28 ///

1 9. Plaintiff Argent entered into a sponsorship agreement with Plaintiff
2 Team Rahal, which agreement provided that Plaintiff Argent would sponsor certain
3 drivers of Plaintiff Team Rahal's Indy Racing Team.

4 10. Defendant is a photographer who, on or about November 13 and 14,
5 2002, took still photographs of one of Plaintiff Team Rahal's drivers, Danica
6 Patrick, pursuant to a contract with a third-party intermediary for Plaintiff Argent's
7 use of such photographs for marketing and publicity (the "Photographs").

8 11. Defendant registered the copyrights in the Photographs with the United
9 States Copyright Office under a single registration, which issued under registration
10 number Vau-564-275 (hereinafter the "Registered Copyright").

11 12. Defendant has informed Plaintiffs that Plaintiffs' use of certain
12 Photographs purportedly infringe Defendant's Registered Copyright.

13 13. Defendant has informed Plaintiffs that Plaintiffs are liable for alleged
14 infringement of Defendant's Registered Copyright as a result of uses of certain
15 Photographs by third parties.

16 14. Plaintiffs deny that they have infringed, or are infringing, Defendant's
17 Registered Copyright.

18 15. Plaintiffs deny that they are liable for any alleged infringement of
19 Defendant's Registered Copyright resulting from uses of certain Photographs by
20 third parties.

21 16. Defendant has threatened to commence legal action against Plaintiffs.

22 17. The parties have attempted to resolve the dispute amicably. However,
23 no mutually acceptable resolution has been reached. As a result of the threats of
24 impending litigation, Plaintiffs are faced with the constant uncertainty of costly
25 litigation. There is, therefore, an actual case and controversy between the parties.

26 ///

27 ///

28 ///

FIRST CLAIM FOR RELIEF

Declaratory Judgment of Non-Infringement of Copyright

18. Plaintiffs repeat the averments in paragraphs 1-17 above as if fully set forth herein.

19. Plaintiffs' uses of the Photographs do not infringe Defendant's Registered Copyright. Therefore, Plaintiffs are entitled to a declaratory judgment of Plaintiffs' rights, specifically, that Plaintiffs have not infringed Defendant's Registered Copyright.

SECOND CLAIM FOR RELIEF

Declaratory Judgment of No Liability for Alleged Infringement by Third Parties

20. Plaintiffs repeat the averments in paragraphs 1-19 above as if fully set forth herein.

21. Plaintiffs did not authorize any third parties to use the Photographs and are not responsible for any such use of the Photographs.

22. Plaintiffs are not liable for any alleged infringement of Defendant's Registered Copyright by third parties. Therefore, Plaintiffs are entitled to a declaratory judgment against Defendant that Plaintiffs are not liable for any alleged infringement of Defendant's Registered Copyright by third parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor as follows:

1. A declaration that Plaintiffs' uses of the Photographs, which Defendant contends are an infringement of Defendant's copyrights, do not constitute infringement of Defendant's Registered Copyright pursuant to 17 U.S.C. § 501 or a violation of any other rights held by Defendant;

///

///

1 2. A declaration that Plaintiffs are not liable for any uses of Photographs
2 by third parties, which Defendant alleges are an infringement of Defendant's
3 Registered Copyright; and

4 3. Such other and further relief as the Court deems just and proper.

5 DATED: August 14, 2006

BUCHALTER NEMER,
A Professional Corporation

By: 

MICHAEL L. WACHTTELL
Attorneys for Plaintiff
ARGENT MORTGAGE COMPANY, LLC

10 DATED: August 14, 2006

BAKER & HOSTETLER LLP

By: 

LISA I. CARTEEN
Attorneys for Plaintiff
TEAM RAHAL, INC.

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to F.R.C.P. 38(b), Plaintiffs hereby demand a trial by jury in this
3 action of any issues triable by jury.
4

5 DATED: August 4, 2006

BUCHALTER NEMER
A Professional Corporation

By: 

MICHAEL L. WACHTELL
Attorneys for Plaintiff
ARGENT MORTGAGE COMPANY, LLC

10 DATED: August 14, 2006

BAKER & HOSTETLER LLP

By: 

LISA I. CARTEEN
Attorneys for Plaintiff
TEAM RAHAL, INC.

17 501135461.1
18 BN 945090vi

Exhibit "B"

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15 Attorneys for Defendant and Counterclaimant
16 EDWARD MCCAIN

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 SOUTHERN DIVISION

20 ARGENT MORTGAGE COMPANY,
21 LLC, a California limited liability
22 company; and TEAM RAHAL, INC.,
23 an Ohio Corporation, Rahal Letterman
24 Racing, Inc.,

25 Plaintiffs,

26 v.

27 EDWARD McCain, an individual,
28 Defendant.

Case No. SACV 06-749 CJC (RNBx)

ANSWER TO COMPLAINT FOR
DECLARATORY RELIEF AND
COUNTERCLAIMS FOR
COPYRIGHT INFRINGEMENT

JURY TRIAL DEMANDED

Judge: Hon. Cormac J. Carney
Crtrm: 9B

EDWARD McCain, an individual,
Counterclaim Plaintiff,

v.

TEAM RAHAL, INC., an Ohio
Corporation, RAHAL LETTERMAN
RACING, INC., a California limited
liability company; and ARGENT
MORTGAGE COMPANY, LLC, a
California limited liability company,

Counterclaim Defendants.

1 Defendant and Counterclaimant EDWARD MCCAIN ("McCain") hereby
2 answers the Complaint ("Complaint") of Plaintiffs ARGENT MORTGAGE
3 COMPANY, LLC ("Argent") and TEAM RAHAL, INC. (collectively "Plaintiffs") as
4 follows:

5 **JURISDICTION AND VENUE**

6 1. Defendant denies the allegations in Paragraph 1 of the Complaint while
7 admitting that copyrights are registered under United States Registration No. Vau-
8 564-275.

9 2. Defendant denies the allegations contained in Paragraphs 2 and 3 of the
10 Complaint.

11 **THE PARTIES**

12 3. Defendant admits, on information and belief, the allegations contained in
13 Paragraphs 4 and 5 of the Complaint.

14 4. Defendant admits the allegations contained in Paragraph 6 of the
15 Complaint.

16 **FACTS**

17 5. Defendant lacks knowledge or information sufficient to admit or deny the
18 allegations contained on Paragraphs 7, 8 and 9 of the Complaint.

19 6. Defendant admits only to the allegation in Paragraph 10 of the Complaint
20 that he is the author of and exclusive owner of all rights in and to photographs taken
21 by him on or about November 13 and 14th 2002, of Indy-series race car driver, Danica
22 Patrick (the "Photographs"), but denies the alleged fact that Plaintiff Argent was
23 authorized to use the Photographs pursuant to a contract with a third party
24 intermediary.

25 7. Defendant denies the allegations contained in Paragraph 11 of the
26 Complaint, but admits that the Photographs are registered with the U.S. Copyright
27 Office, which issued registration number Vau-564-275 (hereinafter "Registered
28 Copyright").

1 8. Defendant admits the allegations in paragraphs 12 and 13 of the
2 Complaint.

3 9. Defendant denies the allegations in paragraph 14, 15, 16 and 17 of the
4 Complaint.

5 **AS TO THE FIRST CLAIM FOR RELIEF**

6 **Declaratory Judgment of Non-Infringement of Copyright**

7 10. Defendant realleges and incorporates by reference his responses to
8 Paragraphs 1-17 of the Complaint as though they were fully set forth herein.

9 11. Defendant denies the allegations in Paragraphs 18 and 19 of the Complaint.

10 **AS AND TO THE SECOND CLAIM FOR RELIEF**

11 **Declaratory Judgment of Non-Infringement of Copyright**

12 12. Defendant realleges and incorporates by reference his responses to
13 Paragraphs 1-19 of the Complaint as though they were fully set forth herein.

14 13. Defendant denies the allegations in Paragraphs 20, 21, and 22 of the
15 Complaint.

16 **AS TO PLAINTIFFS' PRAYER FOR RELIEF**

17 14. Defendant denies that Plaintiffs are entitled to any of the relief sought in
18 their Complaint or to any relief whatsoever from Defendant.

19 **AFFIRMATIVE DEFENSES**

20 In addition to the grounds set forth in Defendant's Counterclaims to the
21 Complaint, which constitute an absolute defense to the Complaint, Defendant hereby
22 additionally alleges as follows:

23 **First Affirmative Defense to All Claims**

24 **(Failure to State Claim)**

25 15. Each of Plaintiffs' claims fails to state facts sufficient to constitute a claim
26 upon which relief can be granted.

27 **Second Affirmative Defense to All Claims**

28 **(Estoppel)**

1 16. Each of Plaintiffs' claims is barred to the extent that Defendant reasonably
2 and detrimentally relied on the representations or conduct of Plaintiffs, their
3 predecessors or the representatives of either.

4 **Third Affirmative Defense to All Claims**

5 (Waiver)

6 17. Each of Plaintiffs' claims is barred because Plaintiffs have waived each and
7 every claim set forth in the Complaint.

8 **Fourth Affirmative Defense to All Claims**

9 (Laches)

10 18. Each of Plaintiffs' claims is barred by the doctrine of laches.

11 **Fifth Affirmative Defense to All Claims**

12 (Unclean Hands)

13 19. Plaintiffs are barred from obtaining equitable relief on their claims because
14 they have acted in bad faith and have unclean hands.

15 **Sixth Affirmative Defense to All Claims**

16 (Justification)

17 20. Each of Plaintiffs' claims is barred because Defendant at all times
18 acted in good faith, with absence of malicious intent to injure Plaintiffs, in that his
19 conduct constituted lawful, proper, and justified means to further his sole purpose of
20 engaging in legal business activities.

21 **Seventh Affirmative Defense to All Claims**

22 (Lack of Standing)

23 21. Each of Plaintiffs' claims is barred because Plaintiffs lack standing and/or
24 legal capacity to bring such claims and/or this action.

25
26
27 **Eighth Affirmative Defense to All Claims**

28 (Lack of Facts and Law)

22. Each of Plaintiffs' claims is barred because the Complaint is not well-grounded in fact and the claims therein are not warranted by existing law or by good faith argument for the extension, modification or reversal of existing law.

Ninth Affirmative Defense to All Claims

(Bad Faith)

23. Each of Plaintiffs' claims is barred because Plaintiffs brought the Complaint in bad faith for an improper purpose.

Tenth Affirmative Defense to All Claims

(Fraud)

24. Each of Plaintiffs' claims is barred because of Plaintiffs' fraudulent conduct in connection with the subject matter of the Complaint.

Eleventh Affirmative Defense to All Claims

(Negligent Misrepresentation)

25. Each of Plaintiffs' claims is barred because of Plaintiffs' negligent misrepresentations pertaining to the subject matter of the Complaint.

Twelfth Affirmative Defense to All Claims

(Acts of Others)

26. Any injury, loss, and/or damage Plaintiffs allege to have suffered in the Complaint, which Defendant expressly denies, are the direct and proximate result of the acts and omissions of other persons or entities for whom Defendant is not legally responsible.

Thirteenth Affirmative Defense to All Claims

(Incorporation of Counterclaim)

27. Each of Plaintiffs' claims is barred as a result of Defendant's incorporation herein of the allegations and claims contained within Defendant's counterclaim.

Fourteenth Affirmative Defense to All Claims

(Failure to Mitigate)

1 28. To the extent that Plaintiffs have suffered any damage, loss, and/or injury,
 2 which Defendant expressly denies, Plaintiffs failed to take the necessary, prudent,
 3 and appropriate steps to mitigate the alleged damage, loss, and/or injury they claim
 4 that they have suffered.

5 **Fifteenth Affirmative Defense to All Claims**

6 **(Lack of Due Diligence)**

7 29. Each of Plaintiffs' claims is barred as a result of Plaintiffs' failure to
 8 conduct reasonable and adequate due diligence to protect their own interests and
 9 obligations.

10 **Sixteenth Affirmative Defense to All Claims**

11 **(Privilege)**

12 30. Defendant was legally privileged to commit the acts alleged in the
 13 Complaint, to the extent that such acts occurred.

14 **Seventeenth Affirmative Defense to All Claims**

15 **(Unjust Enrichment)**

16 31. Each of Plaintiffs' claims against Defendant is barred because any recovery
 17 by Plaintiffs in this action would result in unjust enrichment.

18 **Eighteenth Affirmative Defense to All Claims**

19 **(Violations of Law)**

20 32. Each of Plaintiffs' claims is barred to the extent that Plaintiffs have violated
 21 one or more laws in connection with the matters alleged in the Complaint. Among
 22 other things, Plaintiffs caused Photographs to be published in electronic press kits,
 23 advertising, promotional materials, t-shirts and editorial uses in newspapers,
 24 websites, and magazines in violation of Defendants Registered Copyrights.

25
 26
 27 **Nineteenth Affirmative Defense to All Claims**

28 **(Defective Chain-of-Title)**

33. Plaintiffs are not entitled to recover against the Defendant to the extent that Plaintiffs' claimed chain-of-title to the subject works is defective.

Twentieth Affirmative Defense to All Claims

(Parties Lacked Rights Conveyed)

34. Plaintiffs are not entitled to recover against the Defendant to the extent that Plaintiffs' claimed ownership of rights in the subject works is based on rights conveyances from a party or parties which did not own the rights purportedly conveyed.

Twenty-First Affirmative Defense to All Claims

(Failure to Join Indispensable Parties)

35. Plaintiffs have failed to join indispensable parties.

Twenty-Second Affirmative Defense to All Claims

(Additional Defenses)

36. Defendant hereby gives notice that he intends to rely upon any additional affirmative defenses which become available or apparent during discovery and thus reserves the right to amend his answer to assert such additional defenses.

AS AND FOR

THE COUNTERCLAIMS FOR COPYRIGHT INFRINGEMENT

Counterclaimant Edward McCain ("Counterclaimant"), for his complaint for copyright infringement against Counterclaim Defendants Team Rahal, Inc. ("Team Rahal"), Rahal Letterman Racing, LLC ("Rahal Letterman") and Argent Mortgage Company, LLC ("Argent") (collectively, "Counterclaim Defendants"), hereby alleges as follows:

INTRODUCTION

1. Counterclaimant is a prominent commercial photographer whose photography business is located in Tucson, Arizona. In or about November 2002, McCain engaged in a photography session with a then-unknown racing car driver

1 named Danica Patrick. The McCain photographs of Danica Patrick were registered
2 with the U.S. Copyright office and were granted a registration # VAU-564-275 (the
3 "Photographs").

4 2. Upon information and belief Counterclaim Defendants came to possess
5 the Photographs by receiving copies of the Photographs in electronic format with full
6 knowledge of the copyrights and McCain's rights in the Photographs.

7 3. Upon information and belief, Danica Patrick has been racing for Team
8 Rahal and Rahal Letterman since the year 2002. The buzz surrounding Danica
9 Patrick began after the 2004 IndyCar racing season when Team Rahal and Rahal
10 Letterman announced that Patrick would be racing in the IRL IndyCar Series during
11 the 2005 season. On May 29, 2005 Danica Patrick erupted onto the racing scene and
12 quickly became an international media sensation after she became the first woman
13 ever to lead the Indianapolis 500 over its 89-year race history at the age of 23. Patrick
14 subsequently posted the highest ever finish for a female driver in an Indianapolis 500
15 by placing fourth that day, which topped Janet Guthrie's ninth place finish in 1978.

16 4. Counterclaim Defendants, in and around the time that Danica Patrick
17 gained notoriety as a popular sports figure, began a lucrative and national
18 sponsorship campaign featuring Patrick. Counterclaim Defendants, individually or in
19 concert, reproduced at least 19 of the Photographs of Danica Patrick by Edward
20 McCain in various and numerous media including print advertisement, promotional
21 materials, souvenir programs, media guides in print and electronic formats, so-called
22 "hero-cards", t-shirts, electronic press kits, websites and various electronic media,
23 including the Internet. Further, Counterclaim Defendants distributed and caused to
24 be published Photographs by various media outlets such as People Magazine,
25 Magazine, Indy Men's Magazine, USA Today and other third parties for
26 reproduction in print and electronic media as part of a massive public relations
27 campaign to promote Danica Patrick, Team Rahal, Rahal Letterman and Argent (a
28 major sponsor featured prominently in the Photographs), as well as other third party

1 sponsors, including Norwalk Furniture, Pioneer Electronics and Toyota Motors.
2 Copies of the Photographs distributed by Counterclaim Defendants to media for
3 purposes of promoting Counterclaim Defendants enterprises through publicity
4 appeared on countless websites. All reproductions by Counterclaim Defendants were
5 undertaken without the permission of and in wanton disregard of Counterclaimant's
6 rights in the Photographs.

7 5. Upon information and belief, Counterclaim Defendants are sophisticated
8 and experienced corporations engaged in multimillion dollar marketing campaigns
9 and were either aware that they did not have any rights to reproduce the Photographs
10 or did not take the reasonable steps necessary to determine whether they had rights to
11 exploit the Photographs. Furthermore, upon information and belief, the actions of
12 Counterclaim Defendants have caused and constitute over 100 known acts of
13 copyright infringement relating to the Photographs.

14 6. On or about June 1, 2005 and again on or about August 10, 2005,
15 Counterclaimant delivered by registered mail cease and desist letters upon
16 Counterclaim Defendants providing notification that Counterclaim Defendants'
17 numerous reproductions of the Photographs violated Counterclaimant's copyrights in
18 the Photographs. Following such notice, Counterclaim Defendants ceased further
19 unauthorized reproduction and distribution of the Photographs. Rahal Letterman has
20 admitted that it had widely distributed the Photographs to third parties for
21 promotional uses in all media throughout the period beginning in 2003 through in or
22 about June, 2005.

23 JURISDICTIONAL ALLEGATION

24 7. Counterclaimant denies that the Court has original jurisdiction over this
25 action. However, should the Court deem jurisdiction is proper, Counterclaimant
26 alleges the Counterclaims set forth below.

27 8. Venue is not proper in this district under 28 U.S.C. § 1391.
28 Counterclaimant does not transact business within this district and, therefore,

1 Counterclaimant is not subject to personal jurisdiction in this district. However,
2 should the Court deem venue proper the Counterclaimant alleges the Counterclaims
3 below.

4 **PARTIES**

5 9. Counterclaimant is a resident of Tucson, Arizona, with a principal place
6 of business located at 211 South 4th Avenue, Tucson, Arizona, 85701.

7 10. Counterclaim Defendant Argent is a California limited liability company
8 with a principal place of business located at 3 Park Plaza, 19th Floor, Irvine,
9 California 92614. Upon information and belief Argent transacts business in Arizona
10 and New York, as well as throughout the United States.

11 11. Counterclaim Defendant Rahal is an Ohio corporation established by
12 Bobby Rahal, which upon information and belief is engaged in the operation of an
13 IndyCar series racing team that participates in car race events and transacts business
14 throughout the United States including New York and Arizona.

15 12. Counterclaim Defendant Rahal Letterman is a Ohio corporation
16 established by Bobby Rahal and television talk show host David Letterman engaged
17 in the operation of an IndyCar series racing team that participates in race events and
18 transacts business throughout the United States, including New York and Arizona.

19 13. Counterclaim Defendants do and at all times relevant to the matters
20 alleged in this complaint did regularly transact business in California, including
21 interstate trade and commerce. Many of the unlawful and unfair actions and conduct
22 of Counterclaim Defendants described herein were conceived, performed or made
23 effective in California.

24 14. Counterclaimant is informed and believes, and on that basis alleges, that
25 at all times herein mentioned, each Counterclaim Defendant was acting for himself or
26 itself, individually, and as the agent, employee, representative, partner and co-
27 conspirator of each of the other defendants, individually and collectively, and in
28 undertaking the acts, conduct, transactions and contracts herein alleged, each of the

1 defendants was acting on his and its own behalf and on behalf of the other defendants
 2 in the course and scope of such agency, employment, representation, partnership and
 3 conspiracy. Counterclaimant is informed and believes, and on that basis alleges, that
 4 each Counterclaim Defendant authorized, approved, and ratified each and every act,
 5 transaction and contract undertaken by each other defendant, and each and every act,
 6 transaction and occurrence undertaken by each Counterclaim Defendant was
 7 perpetrated in furtherance of Counterclaim Defendants' agency, employment,
 8 representation, partnership and conspiracy with each other defendant.

9 **COUNTERCLAIMANT'S COPYRIGHTS**

10 15. The United States Copyright Office has registered each of
 11 Counterclaimant's Photographs as works of visual arts. McCain continues to be the
 12 holder of all copyrights relating to the Photographs, registered under the following
 13 entry: VA U-564-275 under the title "*Unpublished Photographs, Edward McCain's*
 14 *Photography of Danica Patrick and Team Rahal taken November 14th and 15th, 2002*
 15 *at Firebird Raceway, Phoenix Arizona.*" A true and correct copy of the certificate of
 16 registration is attached hereto as "Exhibit A" and is incorporated herein by reference.
 17 Counterclaimant is listed as the sole Author. Counterclaimant's copyrights are
 18 hereinafter collectively referred to as the "Copyrights."

19 **FIRST CLAIM FOR RELIEF**

20 **FOR DAMAGES FOR COPYRIGHT INFRINGEMENT**

21 **(AGAINST ARGENT)**

22 **(17 U.S.C. §§ 101 et seq.)**

23 16. Counterclaimant realleges and incorporates by this reference each and
 24 every allegation set forth above at paragraphs 1 through 15 inclusive, as though fully
 25 set forth herein.

26 17. Counterclaimant is currently and at all relevant times has been the sole
 27 proprietor of all right, title and interest in and to the Copyrights. Counterclaimant
 28 has complied in all respects with Title 17 of the United States Code, secured the

1 exclusive rights and privileges in and to the Copyrights, and has received from the
2 Register of Copyrights the appropriate certifications of registration, which constitute
3 prima facie evidence of the validity of the copyrights and of the facts stated in the
4 certificates.

5 18. After the dates of registration of the Copyrights and continuing to date,
6 Counterclaim Defendant Argent reproduced, manufactured, marketed, displayed,
7 promoted, sold and/or offered for sale unapproved and unauthorized copies of the
8 Photographs which are protected by the Copyrights. Counterclaim Defendant
9 Argent's conduct was without the consent of Counterclaimant in violation of rights
10 afforded by the Copyrights.

11 19. Counterclaimant is informed and believes, and on that basis alleges, that
12 Counterclaim Defendant Argent engaged in conduct which is willful within the
13 meaning of section 504(c)(2) of the Copyright Act of 1976 and with knowledge of
14 the Copyrights.

15 20. Counterclaim Defendant Argent's infringements of the Copyrights
16 caused damage to Counterclaimant, including injury to its business reputation and
17 loss of past and prospective income. Counterclaimant is entitled to recover from
18 Counterclaim Defendant Argent the damages it has sustained and will sustain, and
19 any gains, profits and advantages obtained by Argent as a result of Argent's acts of
20 infringement alleged above. McCain is also entitled to an award of its attorneys' fees
21 and costs. At present, the amount of such damages, gains, profits and advantages has
22 not been fully ascertained by Counterclaimant, but Counterclaimant is informed and
23 believes, and on the basis of such information and belief alleges, that the amount is in
24 excess of \$1,000,000.00. In the alternative, Counterclaimant is entitled to an award
25 of statutory damages of up to \$100,000 per violation pursuant to section 504(c)(2) of
26 the Copyright Act of 1976.

27 **SECOND CLAIM FOR RELIEF**
28 **FOR DAMAGES FOR COPYRIGHT INFRINGEMENT**

(AGAINST TEAM RAHAL)

(17 U.S.C. §§ 101 et seq.)

21. Counterclaimant realleges and incorporates by this reference each and every allegation set forth above at Paragraphs 1 through 20 inclusive, as though fully set forth herein.

22. Counterclaimant is currently and at all relevant times has been the sole proprietor of all right, title and interest in and to the Copyrights. Counterclaimant has complied in all respects with Title 17 of the United States Code, secured the exclusive rights and privileges in and to the Copyrights, and has received from the Register of Copyrights the appropriate certifications of registration, which constitute prima facie evidence of the validity of the copyrights and of the facts stated in the certificates.

23. After the dates of registration of the Copyrights and continuing to date, Counterclaim Defendant Team Rahal reproduced, manufactured, marketed, displayed, promoted, sold and/or offered for sale unapproved and unauthorized copies of the Photographs which are protected by the Copyrights. Counterclaim Defendant Team Rahal's conduct was without the consent of Counterclaimant in violation of rights afforded by the Copyrights.

24. Counterclaimant is informed and believes, and on that basis alleges, that Counterclaim Defendant Team Rahal engaged in conduct which is willful within the meaning of section 504(c)(2) of the Copyright Act of 1976 and with knowledge of the Copyrights.

25. Counterclaim Defendant's infringements of the Copyrights caused damage to Counterclaimant, including injury to its business reputation and loss of past and prospective income. Counterclaimant is entitled to recover from Counterclaim Defendant Team Rahal the damages it has sustained and will sustain, and any gains, profits and advantages obtained by Team Rahal as a result of Team Rahal's acts of infringement alleged above. Counterclaimant is also entitled to an

1 award of its attorneys' fees and costs. At present, the amount of such damages,
 2 gains, profits and advantages has not been fully ascertained by Counterclaimant, but
 3 Counterclaimant is informed and believes, and on the basis of such information and
 4 belief alleges, that the amount is in excess of \$1,000,000.00. In the alternative,
 5 Counterclaimant is entitled to an award of statutory damages of up to \$100,000 per
 6 violation pursuant to section 504(c)(2) of the Copyright Act of 1976.

7
 8 **THIRD CLAIM FOR RELIEF**
 9 **FOR DAMAGES FOR COPYRIGHT INFRINGEMENT**
 10 **(AGAINST RAHAL LETTERMAN)**
 11 **(17 U.S.C. §§ 101 et seq.)**

12 26. Counterclaimant realleges and incorporates by this reference each and
 13 every allegation set forth above at Paragraphs 1 through 25 inclusive, as though fully
 14 set forth herein.

15 27. Counterclaimant is currently and at all relevant times has been the sole
 16 proprietor of all right, title and interest in and to the Copyrights. Counterclaimant
 17 has complied in all respects with Title 17 of the United States Code, secured the
 18 exclusive rights and privileges in and to the Copyrights, and has received from the
 19 Register of Copyrights the appropriate certifications of registration, which constitute
 20 prima facie evidence of the validity of the copyrights and of the facts stated in the
 21 certificates.

22 28. After the dates of registration of the Copyrights and continuing to date,
 23 Counterclaim Defendant Rahal Letterman reproduced, manufactured, marketed,
 24 displayed, promoted, sold and/or offered for sale unapproved and unauthorized
 25 copies of the Photographs which are protected by the Copyrights. Counterclaim
 26 Defendant Rahal Letterman's conduct was without the consent of Counterclaimant in
 27 violation of rights afforded by the Copyrights.

28 29. Counterclaimant is informed and believes, and on that basis alleges, that

1 Counterclaim Defendant Rahal Letterman engaged in conduct which is willful within
 2 the meaning of section 504(c)(2) of the Copyright Act of 1976 and with knowledge
 3 of the Copyrights.

4 30. Counterclaim Defendant Rahal Letterman's infringements of the
 5 Copyrights caused damage to Counterclaimant, including injury to its business
 6 reputation and loss of past and prospective income. Counterclaimant is entitled to
 7 recover from Counterclaim Defendant Rahal Letterman the damages it has sustained
 8 and will sustain, and any gains, profits and advantages obtained by Rahal Letterman
 9 as a result of Rahal Letterman's acts of infringement alleged above. McCain is also
 10 entitled to an award of its attorneys' fees and costs. At present, the amount of such
 11 damages, gains, profits and advantages has not been fully ascertained by
 12 Counterclaimant, but Counterclaimant is informed and believes, and on the basis of
 13 such information and belief alleges, that the amount is in excess of \$1,000,000.00. In
 14 the alternative, Counterclaimant is entitled to an award of statutory damages of up to
 15 \$100,000 per violation pursuant to section 504(c)(2) of the Copyright Act of 1976.

16
 17 **FOURTH CLAIM FOR RELIEF**
 18 **FOR DAMAGES FOR COPYRIGHT INFRINGEMENT**
 19 **(AGAINST ALL COUNTERCLAIM DEFENDANTS)**
 20 **(17 U.S.C. §§ 101 et seq.)**

21 31. Counterclaimant realleges and incorporates by this reference each and
 22 every allegation set forth above at Paragraphs 1 through 30 inclusive, as though fully
 23 set forth herein.

24 32. Counterclaimant is currently and at all relevant times has been the sole
 25 proprietor of all right, title and interest in and to the Copyrights. Counterclaimant
 26 has complied in all respects with Title 17 of the United States Code, secured the
 27 exclusive rights and privileges in and to the Copyrights, and has received from the
 28 Register of Copyrights the appropriate certifications of registration, which constitute

2 | certificates.

14 711.com, www.madame.tenebris.com, ekartingnews.com,
15 www.madame.tenebris.com (collectively "Third Party Infringers") among others known
16 and presently unknown, unauthorized copies of the Photographs which are protected
17 by the Copyrights, for reproduction for purposes of publicity and marketing.

24 Photographs would violate the Copyrights.

28 Copyrights.

36. Counterclaim Defendants' infringements of the Copyrights caused damage to McCain, including injury to his business reputation and loss of past and prospective income. Counterclaimant is entitled to recover from Counterclaim Defendants the damages he has sustained and will sustain, and any gains, profits and advantages obtained by Counterclaim Defendants as a result of Counterclaim Defendants' acts of infringement alleged above. Counterclaimant is also entitled to an award of his attorneys' fees and costs. At present, the amount of such damages, gains, profits and advantages has not been fully ascertained by Counterclaimant, but Counterclaimant is informed and believes, and on the basis of such information and belief alleges, that the amount is in excess of \$1,000,000.00. In the alternative, Counterclaimant is entitled to an award of statutory damages of up to \$100,000 per violation pursuant to section 504(c)(2) of the Copyright Act of 1976.

PRAYER FOR RELIEF AS TO THE COMPLAINT

FOR DECLARATORY JUDGMENT

WHEREFORE, Defendant prays for judgment, as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. That the Complaint and each purported claim or cause of action therein be dismissed with prejudice;
3. That judgment be entered in favor of Defendant on the Complaint;
4. That the Court award Defendant his attorneys' fees and costs as allowed by law; and
5. That the Court award such other and further relief as the Court may deem just and proper.

PRAYER FOR RELIEF AS TO THE COUNTERCLAIMS

FOR COPYRIGHT INFRINGEMENT

WHEREFORE, Counterclaimant prays for judgment against Counterclaim Defendants as follows:

1. For actual, consequential and general damages and restitution in amounts according to proof at time of trial;
2. For statutory damages;
3. For punitive damages;
4. For reasonable attorneys' fees and costs herein; and
5. For such other and further relief as the Court may deem just and proper.

Dated: December 7, 2006

PELOSI WOLF EFFRON & SPATES LLP

By: 

JOHN PELOSI, ESQ.

Attorneys for Defendant and Counterclaimant
EDWARD McCain
(Pro Hac Vice Application Pending)

THE LAW OFFICES OF LARRY S. GREENFIELD

By: 

LARRY S. GREENFIELD, ESQ.

The Law Offices of Larry S. Greenfield
Attorneys for Defendant and Counterclaimant
EDWARD MCCAIN

CASE NAME: ARGENT MORTGAGE COMPANY, LLC & TEAM RAHAL, INC.
v. EDWARD McCain

ACTION NUMBER: SACV 06-749 CJC (RNBx)

18
ANSWER TO COMPLAINT AND COUNTERCLAIMS

Exhibit B

Page 31

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EXHIBIT A

CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

SHORT FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VAU 564-275



Effective Date of Registration

11 29 02

Application Received

NOV 29, 2002

Deposit Received

NOV 29, 2002

Two

Fee Received

TYPE OR PRINT IN BLACK INK. DO NOT WRITE ABOVE THIS LINE.

Title of This Work:	1	Unpublished Photographs, Edward McCain's photography of Danica Patrick & Team Rahal taken Nov. 14th & 15th, 2002 at Firebird Raceway, Phoenix, AZ 988 Photographs
Alternative title or title of larger work in which this work was published.		
Name and Address of Author and Owner of the Copyright:	2	Edward McCain 211 S 4th Avenue Tucson, AZ 85701-2103 Phone (520) 623-1998 Fax (520) 623-1190 Email edward@mccainphoto.com
Nationality or domicile: Phone, fax, and email:		
Year of Creation:	3	2002
If work has been published, Date and Nation of Publication:	4	a. Date _____ (Month, day, and year all required) Month Day Year b. Nation _____
Type of Authorship in This Work: Check all that this author created.	5	<input type="checkbox"/> 3-Dimensional sculpture <input checked="" type="checkbox"/> Photograph <input type="checkbox"/> Map <input type="checkbox"/> 2-Dimensional artwork <input checked="" type="checkbox"/> Jewelry design <input type="checkbox"/> Text <input type="checkbox"/> Technical drawing
Signature:	6	I certify that the statements made by me in this application are correct to the best of my knowledge. Check one <input checked="" type="checkbox"/> Author <input type="checkbox"/> Authorized agent X _____ <i>Edward McCain</i>
Registration cannot be completed without a signature.		
Name and Address of Person to Contact for Rights and Permissions: Phone, fax, and email:	7	<input checked="" type="checkbox"/> Check here if same as #2 above. Phone () Fax () Email

8

Certificate will be mailed in window envelope to this address:

Name ▼	Edward McCain
Number/Street Apt ▼	211 S 4th Avenue
City/State/ZIP ▼	Tucson, AZ 85701-2103

Complete this space only if you currently hold a Deposit Account in the Copyright Office.

9

Deposit Account #

Name

DO NOT WRITE HERE Page 1 of 1 pages

*17 U.S.C. § 506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.
June 1999 - 100,000
WEB REV: June 1999
PRINTED ON RECYCLED PAPER
U.S. GOVERNMENT PRINTING OFFICE: 1999-454 8/9/94

PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

ANSWER TO COMPLAINT AND COUNTERCLAIMS

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail, to the addressees (attorneys for Plaintiffs), on this date before 5:00 p.m.:

Michael Wachtell, Esq.
Richard P. Ormand, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

Lisa I. Carteen, Esq.
BAKER & HOSTETLER
333 South Grand Avenue,
Suite 1800
Los Angeles, CA 90071-1523

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 7, 2006, at New York, New York.


John Pelosi

1 PELOSI WOLF EFFRON & SPATES LLP
John Pelosi (*Pro Hac Vice Application pending*)
2 233 Broadway, 22nd Floor
New York, NY 10279
3 Telephone: (212) 334-3599
Facsimile: (212) 571-9149
4 Email:

5 THE LAW OFFICES OF LARRY S. GREENFIELD
Larry S. Greenfield (SBN: 093917)
6 433 N. Camden Drive, Suite 400
Beverly Hills, CA 90210-4408
7 Telephone: (310) 279-5210
8 Facsimile: (310) 362-8413
Email: larrysgreenfield@gmail.com

9 Attorneys for Defendant and Counterclaimant
10 EDWARD MCCAIN

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 SOUTHERN DIVISION

14 ARGENT MORTGAGE COMPANY,
LLC, a California limited liability
company; and TEAM RAHAL, INC.,
15 an Ohio Corporation, Rahal Letterman
Racing, Inc.,

16 Plaintiffs,

17 v.

18 EDWARD McCain, an individual,
19 Defendant.

Case No. SACV 06-749 CJC (RNBx)

20 NOTICE OF INTERESTED
PARTIES

Judge: Hon. Cormac J. Carney
Crtrm: 9B

21 EDWARD McCain, an individual,
22 Counterclaim Plaintiff,

23 v.

24 TEAM RAHAL, INC., an Ohio
Corporation, RAHAL LETTERMAN
25 RACING, INC., a California limited
liability company; and ARGENT
26 MORTGAGE COMPANY, LLC, a
California limited liability company,

27 Counterclaim Defendants.
28

1 Pursuant to Local Rule 4.6, the undersigned counsel of record for
2 Defendant/Counterclaim Plaintiff Edward McCain certifies that the following listed
3 parties have (or are believed to have) a direct, pecuniary interest in the outcome of
4 this case. These representations are made to enable the Court to evaluate possible
5 disqualification or recusal.

6
7 None.

8
9 Dated: December 7, 2006
10
11

12 PELOSI WOLF EFFRON & SPATES LLP

13
14 By: 

JOHN PELOSI, ESQ.

15 Attorneys for Defendant and Counterclaimant
16 EDWARD MCCAIN
17 (*Pro Hac Vice Application Pending*)

18 THE LAW OFFICES OF LARRY S. GREENFIELD
19

20
21 By: 

LARRY S. GREENFIELD, ESQ.

22 The Law Offices of Larry S. Greenfield
23 Attorneys for Defendant and Counterclaimant
24 EDWARD MCCAIN
25
26
27
28

PROOF OF SERVICE

I am a citizen of the United States. My business address is 233 Broadway, 22nd Floor, New York, NY 10279. I am employed in the County of New York, where this service occurs. I am over the age of 18 years, and I am not a party to the within cause. I am readily familiar with my firm's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the day set forth below, following ordinary business practice, I served a copy of the foregoing documents described as:

NOTICE OF INTERESTED PARTIES

By Mail: I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail, to the addressees (attorneys for Plaintiffs), on this date before 5:00 p.m.:

Michael Wachtell, Esq.
Richard P. Ormand, Esq.
BUCHALTER NEMER
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457

Lisa I. Carteen, Esq.
BAKER & HOSTETLER
333 South Grand Avenue,
Suite 1800
Los Angeles, CA 90071-1523

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 7, 2006, at New York, New York.



John Pelosi

**ARGENT MORTGAGE COMPANY – COPYRIGHT INFRINGEMENT OF DANICA
PATRICK PHOTOS (McCAIN)**

U.S.D.C CENTRAL DISTRICT – WESTERN DIVISION

CASE NUMBER: SACV 06-749 CJC(RNBx)

PLEADINGS INDEX – VOLUME 1

CLIENT AND MATTER NUMBER: A7440-8005

TAB	DATE FILED AND SERVED	NAME OF PLEADING	PARTY SERVING DOCUMENT
1	D: 08/15/06	SUMMONS	PLAINTIFF ARGENT MORTGAGE COMPANY, ET AL.
2	F: 08/15/06	ARGENT MORTGAGE COMPANY, LLC'S AND TEAM RAHAL, INC.'S COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT DEMAND FOR JURY TRIAL	PLAINTIFF TEAM RAHAL, INC.
3	D: 08/15/06	NOTICE TO COUNSEL	PLAINTIFF TEAM RAHAL, INC.
4	D: 08/15/06	NOTICE OF ASSIGNMENT TO UNITED STATE MAGISTRATE	PLAINTIFF TEAM RAHAL, INC.
5	D: 08/15/06	CIVIL COVER SHEET	PLAINTIFF TEAM RAHAL, INC.
6	F: 08/15/06	ACTION OR APPEAL HAVE BEEN FILED REGARDING COPYRIGHT	PLAINTIFF TEAM RAHAL, INC.
7	F: 08/15/06	CERTIFICATION OF INTERESTED PARTIES	PLAINTIFF TEAM RAHAL, INC.
8	F: 10/03/06	PROOF OF SERVICE	PLAINTIFF TEAM RAHAL, INC.
9	D: 10/16/06	PROOF OF SERVICE SUBPOENA IN A CIVIL	PLAINTIFF ARGENT MORTGAGE COMPANY, ET AL.
10	F: 11/09/06	NOTICE OF INTENT TO SCHEDULE THE CASE	COURT

**ARGENT MORTGAGE COMPANY – COPYRIGHT INFRINGEMENT OF DANICA
PATRICK PHOTOS (McCAIN)**

U.S.D.C CENTRAL DISTRICT – WESTERN DIVISION

CASE NUMBER: SACV 06-749 CJC(RNBx)

PLEADINGS INDEX – VOLUME 1

CLIENT AND MATTER NUMBER: A7440-8005

TAB	DATE FILED AND SERVED	NAME OF PLEADING	PARTY SERVING DOCUMENT
11	F: 11/13/06	STIPULATION TO EXTEND DEFENDANT'S TIME TO RESPOND TO PLAINTIFF'S COMPLAINT	DEFENDANT, EDWARD MCCAIN
12	D: 12/05/06	PROOF OF SERVICE OF PRO HAC VICE APPLICATION AND [PROPOSED] ORDER ON PRO HAC VICE APPLICATION	DEFENDANT, EDWARD MCCAIN
13	D: 12/05/06	APPLICATION ON NON- RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE (JOHN PELOSI)	COURT
14	S: 12/07/06	NOTICE OF INTERESTED PARTIES	DEFENDANT AND COUNTERCLAIMANT, EDWARD MCCAIN
15	F: 12/15/06	ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE	COURT
16	F: 01/03/07	COUNTERCLAIM DEFENDANT ARGENT MORTGAGE COMPANY, LLC'S ANSWER TO COUNTERCLAIMS FOR COPYRIGHT INFRINGEMENT	PLAINTIFF ARGENT MORTGAGE COMPANY
17	E: 01/03/07	COUNTERDEFENDANT TEAM RAHAL, INC.'S ANSWER TO COUNTERCLAIMANT EDWARD MCCAIN'S COUNTERCLAIMS	PLAINTIFF AND COUNTERDEFENDANT, TEAM RAHAL, INC.
18	S: 01/22/07	PLAINTIFF ARGENT MORTGAGE COMPANY'S RULE 26(a)(1) INITIAL DISCLOSURE	PLAINTIFF AND COUNTERDEFENDANT, ARGENT MORTGAGE

**ARGENT MORTGAGE COMPANY – COPYRIGHT INFRINGEMENT OF DANICA
PATRICK PHOTOS (McCain)**

U.S.D.C CENTRAL DISTRICT – WESTERN DIVISION

CASE NUMBER: SACV 06-749 CJC(RNBx)

PLEADINGS INDEX – VOLUME 1

CLIENT AND MATTER NUMBER: A7440-8005

TAB	DATE FILED AND SERVED	NAME OF PLEADING	PARTY SERVING DOCUMENT
			COMPANY.
19	F: 01/22/07	JOINT REPORT PURSUANT TO RULE 26(f)	PLAINTIFF AND COUNTERDEFENDANT TEAM RAHAL, INC.
20	S: 0122/07	DEFENDANT AND COUNTERCLAIM PLAINTIFF'S INITIAL WITNESS LIST	DEFENDANT AND COUNTERCLAIM PLAINTIFF EDWARD McCain
21	S: 01/23/07	APPLICATION OF NON- RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE	PLAINTIFF AND COUNTERDEFENDANT, TEAM RAHAL, INC.
22	S: 01/23/07	ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE	PLAINTIFF AND COUNTERDEFENDANT, TEAM RAHAL, INC.

Exhibit "C"

FILED

2007 JAN 22 PM 2: 02

1 BUCHALTER NEMER
2 A Professional Corporation
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4 RICHARD P. ORMOND (SBN: 207442)
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17 Attorneys for Plaintiff and Counterdefendant
18 TEAM RAHAL, INC.

19 PELOSI WOLF EFFRON AND SPATES LLP
20 JOHN PELOSI (*Admitted Pro Hac Vice*)
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22 New York, NY 10279
23 Telephone: (212) 334-3599
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25 Attorneys for Defendant/Counterclaimant
26 EDWARD MCCAIN

27 UNITED STATES DISTRICT COURT

28 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ARGENT MORTGAGE
COMPANY, LLC, a California
limited liability company; and
TEAM RAHAL, INC., an Ohio
corporation,

Plaintiff,

vs.

EDWARD MCCAIN, an individual,

Defendant.

AND RELATED
COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)

Judge: Hon. Cormac J. Carney

JOINT REPORT PURSUANT TO
RULE 26(f)

Scheduling Order: January 29, 2007

Trial Date: Not Set

FAX FILE

BUCHALTER NEMER
A PROFESSIONAL CORPORATION
LOS ANGELES

BN 1102812v1

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JOINT RULE 26(f) REPORT

1 Attorneys for Plaintiff and Counterclaim Defendant Argent Mortgage
2 Company, LLC ("Argent"), Plaintiff and Counterclaim Defendant Team Rahal, Inc.
3 ("Rahal") (collectively "Plaintiffs"), and Defendant and Counterclaimant Edward
4 McCain ("McCain") met telephonically on January 8, 2007, and conducted the
5 conference required by Fed. R. Civ. Proc. 26(f) and Local Rule 26-1. The parties
6 now submit this Joint Report regarding the conference and report on the following
7 issues:

8 **A) Nature of Claims**

9 Plaintiffs seek declaratory judgment for non-infringement of the copyright
10 registered under United States Copyright Registration No. Vau-564-275. This
11 action arises under The Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and
12 2202, and the copyright laws of the United States, 17 U.S.C. § 101 et. seq.
13 Defendant has counterclaimed that Plaintiffs are liable for the infringement of
14 Defendant's alleged copyrights in certain photographs, including Plaintiffs'
15 unauthorized reproduction and the unauthorized reproduction by third parties who
16 reproduced the photographs (allegedly obtained from Plaintiffs) without McCain's
17 permission. McCain alleges that third parties reproduced the photographs as a
18 direct result of Plaintiffs' warranties and representations. McCain's counterclaims
19 also arise under the copyright laws of the United States, 17 U.S.C. § 101 et. seq.

20 **B) Legal Issues**

21 Plaintiffs believe the key legal issues are: (i) whether the copyright asserted
22 by McCain is valid, enforceable, and/or owned by McCain; (ii) whether Plaintiffs
23 have infringed any valid and enforceable copyright in certain photographs;
24 (iii) whether Plaintiffs are liable for allegedly infringing uses of photographs by
25 third parties; and (iv) if Plaintiffs are liable for any alleged infringements, the
26 appropriate award of damages or statutory damages, depending upon McCain's
27 election.

McCain believes that the key legal issues are (i) that this Court is not the proper venue for this action; (ii) that he has valid registered copyrights in photographs reproduced by Plaintiffs; (iii) that Plaintiffs reproduced the photographs in willful disregard of McCain's copyrights; (iv) that Plaintiffs caused third parties to reproduce the photographs for marketing and promotional purposes to benefit Plaintiffs in willful disregard of McCain's copyrights; and (v) Plaintiffs are liable for statutory damages, reasonable attorneys fees and other damages the Court deems applicable.

C) Likelihood of Motions to Add Parties/Claims, Amended Pleadings, or Transfer Venue (Local Rule 26-1(e))

Argent: Argent may seek to add additional defendants to the action who may be liable to Argent for indemnification and/or other claims. Without waiving its rights to do so, Argent does not anticipate adding additional claims, amending the Pleadings or seeking to transfer venue.

Rahal: Rahal may seek to add additional defendants to the action who may be liable to Rahal for indemnification and/or other claims. Without waiving its rights to do so, Rahal does not anticipate adding additional claims, amending the Pleadings or seeking to transfer venue.

McCain: McCain may seek to dismiss the claims for lack of personal jurisdiction since McCain does not reside in California, nor does he transact business in California. McCain may seek to transfer venue. McCain will likely move for summary judgment on the claims for copyright infringement by Plaintiffs in the proper forum.

Cut-off: The parties agree that the cut-off to add additional parties/claims is August 31, 2007.

D) Discovery and Experts

Rule 26(f)(1): The parties agree to make their initial disclosures no later than January 22, 2007.

1 Rule 26(f)(2): Plaintiffs: Plaintiffs intend to seek discovery regarding the
2 validity of the copyright; the allegedly infringing uses of the Photographs by
3 Plaintiffs and third parties; McCain's dissemination of the photographs; the chain of
4 possession of the photographs; McCain's relationship with alleged third party
5 infringers and with Plaintiffs' agent(s); and the amount of alleged damages.
6 Plaintiffs believe that at least 50 depositions will be required to ascertain the facts
7 surrounding the alleged acts of infringement, which McCain alleges exceed 100,
8 including alleged acts of infringement by more than 35 third parties. As such,
9 extensive third party discovery will be required. Further, Plaintiffs anticipate
10 engaging at least two experts on the issues of infringement and damages.

11 McCain: Intends to seek discovery as to the unauthorized reproduction of
12 McCain's photographs in violation of his copyrights and the unauthorized
13 reproduction by third parties caused by Plaintiffs. Of particular relevance are the
14 facts relating to the provision of photographs by Argent to other Counterclaim
15 Defendants. Depositions of third parties may be necessary to confirm that certain
16 third party infringements were the direct cause of Plaintiffs' acts and omissions.
17 McCain anticipates far fewer depositions: the acts of infringement by Plaintiffs
18 require approximately five depositions and those by third parties approximately
19 seven. McCain anticipates engaging one expert on the issue of infringement,
20 custom and practice in the advertising and promotions industry and damages.

21 Discovery Schedule: The parties have agreed to commence initial written
22 discovery in February 2007. Thereafter, the parties agree to commence taking
23 depositions in April 2007, after initial written discovery. Further, Plaintiffs request
24 that party depositions will take place after third party depositions have been
25 completed.

26 McCain's Position: McCain requests that party depositions take place
27 initially (i.e., prior to third party depositions), or simultaneously, since the acts of
28 infringement by Plaintiffs are the essence of this action and those acts by third

1 parties are entirely separate acts, which are attributed to Plaintiffs. Plaintiffs have
2 instituted an action to declare that they did not violate McCain's copyrights AND
3 that they are not liable for the acts of third parties. Plaintiffs' liability (or lack
4 thereof) is essential to the relief they seek. To require that all third party
5 depositions be completed first would be to totally ignore the underlying facts which
6 provide the basis for Plaintiffs' liability for acts of infringements committed by
7 Plaintiffs. Further, depositions of Plaintiffs are necessary to determine to whom
8 and under what circumstances Plaintiffs provided photographs for reproduction. It
9 is McCain's position that proceeding with third party depositions first is impractical,
10 illogical, wholly inefficient and designed to increase expenses and cause delay.
11 Clearly if Plaintiffs have not violated McCain's copyrights, the acts of third parties
12 are not relevant.

13 *Plaintiffs' Position:* Plaintiffs believe that the majority of the alleged
14 infringements were committed by the third parties identified by McCain. As such,
15 Plaintiffs believe that third-party evidence is critical to adjudication of the
16 underlying claims and needs to be discovered first to determine where liability lies.

17 The parties reserve the right to conduct additional written discovery during or
18 subsequent to taking depositions. Other than as set forth hereinabove, the parties
19 do not believe that discovery should be limited to or focused upon particular issues.
20 See Proposed Dates for discovery deadlines.

21 Rule 26(f)(3) – Electronic Discovery:

22 The parties have agreed to the following procedures with respect to
23 electronic discovery. If not already done, the parties shall take reasonable steps to
24 preserve all discoverable electronic data and media including all hard drives,
25 software, and other recordable media. Each party shall provide the other parties
26 with notice of the specific preservation steps that have been taken and assurances
27 that all discoverable electronic data and media have been so preserved in the file
28

1 format to be agreed upon by the parties. Further, the parties agree that all electronic
2 data and media will be produced on CD-Rom or DVD-Rom.

3 Rule 26(f)(4): The parties anticipate seeking a stipulated protective order
4 under Rule 26(c) regarding the use and dissemination of documents or information,
5 which any party believes is confidential and/or proprietary.

6 Rule 26(f)(5): The parties believe that the limited number of interrogatories
7 pursuant to Rule 33(a) is insufficient and that each will need up to 75
8 interrogatories to complete written discovery. The parties do not believe that any
9 additional changes to the limitations on discovery should be made nor that other
10 limitations should be set.

11 Rule 26(f)(6): The parties at this time do not believe that additional orders
12 under Rules 16(b) and (c) are necessary.

13 **E) Trial Estimate**

14 The parties believe the trial will take three weeks. All parties have requested
15 a jury trial.

16 **F) Proposed Dates**

17 While Plaintiffs would like to resolve this case expeditiously, due to the
18 scope of discovery that is necessary, Plaintiffs believe that the trial date cannot be
19 reasonably set any earlier than mid-2009. Plaintiffs anticipate the need for over 40
20 depositions of third parties, many of which are multinational corporations.
21 Plaintiffs anticipate that many of these third parties will seek protective orders and
22 restrictions with the Court, thereby necessitating a slightly protracted deposition
23 and discovery schedule. As such, Plaintiffs propose the following dates:

- | | | |
|----|--|-------------------|
| 24 | 1) <u>Non-Expert Discovery Cut-Off:</u> | November 21, 2008 |
| 25 | 2) <u>Initial Expert Reports Due:</u> | February 13, 2009 |
| 26 | 3) <u>Rebuttal Expert Reports Due:</u> | February 27, 2009 |
| 27 | 4) <u>Discovery Motion Cut-Off (Filing):</u> | March 23, 2009 |
| 28 | 5) <u>Dispositive Motion Cut-Off (Filing):</u> | May 4, 2009 |

6) Final Pre-Trial Conference: June 15, 2009

7) Trial: July 6, 2009

McCain believes that the trial date can be reasonably set for mid-2008 and proposes the following dates:

8) Non-Expert Discovery Cut-Off: December 27, 2007

9) Initial Expert Reports Due: February 1, 2008

10) Rebuttal Expert Reports Due: February 22, 2008

11) Discovery Motion Cut-Off (Filing): March 24, 2008

12) Dispositive Motion Cut-Off (Filing): May 15, 2008

13) Final Pre-Trial Conference: June 20, 2008

14) Trial: July 21, 2008

G) Complex Case (L.R. 26-1(a))

The parties believe that this case is not complex and does not require any of Manual For Complex Litigation procedures.

H) Consent to Magistrate Judge

The parties do not consent to a Magistrate Judge.

I) Settlement (L.R. 26-1(c))

The parties have engaged in preliminary settlement negotiations. Although a resolution has not been reached, the parties believe that a settlement is possible.

Pursuant to Local Rule 16-15.4, the parties prefer Settlement Procedure No. 3, whereby the parties shall participate in a non-judicial dispute resolution proceeding, namely, private mediation.

J) All Other Matters

There are no other matters at this time.

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DATED: January 22, 2007

Respectfully submitted,

BUCHALTER NEMER
A Professional Corporation

By: 

RICHARD P. ORMOND

Attorneys for Plaintiff and Counterclaim
Defendant Argent Mortgage Company, LLC

DATED: January _____, 2007

BAKER & HOSTETLER LLP

By: _____

LISA L. CARTEEN

Attorneys for Plaintiff and Counterclaim
Defendant Team Rahal, Inc.

DATED: January _____, 2007

PELOSI WOLF EFFRON & SPATES LLP

By: _____

JOHN PELOSI

Attorneys for Defendant and
Counterclaim Plaintiff Edward McCain

501241668.2

1 J) All Other Matters

2 There are no other matters at this time.

3
4 Respectfully submitted,

5 DATED: January ____, 2007

6 BUCHALTER NEMER
A Professional Corporation

7
8 By: RICHARD P. ORMOND
9 Attorneys for Plaintiff and Counterclaim
Defendant Argent Mortgage Company, LLC

10 DATED: January 22, 2007

11 BAKER & HOSTETLER LLP

12
13 By: LISA L. CARTEEN
14 Attorneys for Plaintiff and Counterclaim
Defendant Team Rahal, Inc.

15 DATED: January ____, 2007

16 PELOSI WOLF EFFRON & SPATES LLP

17
18 By: JOHN PELOSI
19 Attorneys for Defendant and
Counterclaim Plaintiff Edward McCain

20 501241668.3

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BUCHALTER NEMER
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LOS ANGELES

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JOINT RULE 26(F) REPORT

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DATED: January ____, 2007

Respectfully submitted,
BUCHALTER NEMER
A Professional Corporation

DATED: January ____, 2007

By: RICHARD P. ORMOND
Attorneys for Plaintiff and Counterclaim
Defendant Argent Mortgage Company, LLC
BAKER & HOSTETLER LLP

DATED: January 22, 2007

By: LISA L. CARTEEN
Attorneys for Plaintiff and Counterclaim
Defendant Team Rahal, Inc.
PELOSI WOLF EFFRON & SPATES LLP

By: JOHN PELOSI
Attorneys for Defendant and
Counterclaim Plaintiff Edward McCain

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BUCHALTER NEMER
A Professional Corporation
Los Angeles

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JOINT RULE 26(F) REPORT

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6 Attorneys for Plaintiff and Counterdefendant
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7 BAKER & HOSTETLER LLP
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11 Attorneys for Plaintiff and Counterdefendant
TEAM RAHAL, INC.

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New York, NY 10279
14 Telephone: (212) 334-3599
Facsimile: (212) 571-9149
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16 Attorneys for Defendant/Counterclaimant
EDWARD McCain

17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 ARGENT MORTGAGE
COMPANY, LLC, a California
20 limited liability company; and
TEAM RAHAL, INC., an Ohio
21 corporation,

22 Plaintiff,

23 vs.

24 EDWARD MCCAIN, an individual,

25 Defendant.

26 AND RELATED
27 COUNTERCLAIMS
28

Case No. SACV 06-749 CJC (RNBx)

Judge: Hon. Cormac J. Carney

JOINT REPORT PURSUANT TO
RULE 26(f)

Scheduling Order: January 29, 2007

Trial Date: Not Set

Attorneys for Plaintiff and Counterclaim Defendant Argent Mortgage Company, LLC ("Argent"), Plaintiff and Counterclaim Defendant Team Rahal, Inc. ("Rahal") (collectively "Plaintiffs"), and Defendant and Counterclaimant Edward McCain ("McCain") met telephonically on January 8, 2007, and conducted the conference required by Fed. R. Civ. Proc. 26(f) and Local Rule 26-1. The parties now submit this Joint Report regarding the conference and report on the following issues:

A) Nature of Claims

Plaintiffs seek declaratory judgment for non-infringement of the copyright registered under United States Copyright Registration No. Vau-564-275. This action arises under The Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the copyright laws of the United States, 17 U.S.C. § 101 et. seq. Defendant has counterclaimed that Plaintiffs are liable for the infringement of Defendant's alleged copyrights in certain photographs, including Plaintiffs' unauthorized reproduction and the unauthorized reproduction by third parties who reproduced the photographs (allegedly obtained from Plaintiffs) without McCain's permission. McCain alleges that third parties reproduced the photographs as a direct result of Plaintiffs' warranties and representations. McCain's counterclaims also arise under the copyright laws of the United States, 17 U.S.C. § 101 et. seq.

B) Legal Issues

Plaintiffs believe the key legal issues are: (i) whether the copyright asserted by McCain is valid, enforceable, and/or owned by McCain; (ii) whether Plaintiffs have infringed any valid and enforceable copyright in certain photographs; (iii) whether Plaintiffs are liable for allegedly infringing uses of photographs by third parties; and (iv) if Plaintiffs are liable for any alleged infringements, the appropriate award of damages or statutory damages, depending upon McCain's election.

McCain believes that the key legal issues are (i) that this Court is not the proper venue for this action; (ii) that he has valid registered copyrights in photographs reproduced by Plaintiffs; (iii) that Plaintiffs reproduced the photographs in willful disregard of McCain's copyrights; (iv) that Plaintiffs caused third parties to reproduce the photographs for marketing and promotional purposes to benefit Plaintiffs in willful disregard of McCain's copyrights; and (v) Plaintiffs are liable for statutory damages, reasonable attorneys fees and other damages the Court deems applicable.

C) Likelihood of Motions to Add Parties/Claims, Amended Pleadings, or Transfer Venue (Local Rule 26-1(e))

Argent: Argent may seek to add additional defendants to the action who may be liable to Argent for indemnification and/or other claims. Without waiving its rights to do so, Argent does not anticipate adding additional claims, amending the Pleadings or seeking to transfer venue.

Rahal: Rahal may seek to add additional defendants to the action who may be liable to Rahal for indemnification and/or other claims. Without waiving its rights to do so, Rahal does not anticipate adding additional claims, amending the Pleadings or seeking to transfer venue.

McCain: McCain may seek to dismiss the claims for lack of personal jurisdiction since McCain does not reside in California, nor does he transact business in California. McCain may seek to transfer venue. McCain will likely move for summary judgment on the claims for copyright infringement by Plaintiffs in the proper forum.

Cut-off: The parties agree that the cut-off to add additional parties/claims is August 31, 2007.

D) Discovery and Experts

Rule 26(f)(1): The parties agree to make their initial disclosures no later than January 22, 2007.

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 23 depositions in April 2007, after initial written discovery. Further, Plaintiffs request
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 28 infringement by Plaintiffs are the essence of this action and those acts by third

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10 illogical, wholly inefficient and designed to increase expenses and cause delay.
11 Clearly if Plaintiffs have not violated McCain's copyrights, the acts of third parties
12 are not relevant.

13 *Plaintiffs' Position:* Plaintiffs believe that the majority of the alleged
14 infringements were committed by the third parties identified by McCain. As such,
15 Plaintiffs believe that third-party evidence is critical to adjudication of the
16 underlying claims and needs to be discovered first to determine where liability lies.

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18 subsequent to taking depositions. Other than as set forth hereinabove, the parties
19 do not believe that discovery should be limited to or focused upon particular issues.
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23 electronic discovery. If not already done, the parties shall take reasonable steps to
24 preserve all discoverable electronic data and media including all hard drives,
25 software, and other recordable media. Each party shall provide the other parties
26 with notice of the specific preservation steps that have been taken and assurances
27 that all discoverable electronic data and media have been so preserved in the file
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1 format to be agreed upon by the parties. Further, the parties agree that all electronic
2 data and media will be produced on CD-Rom or DVD-Rom.

3 Rule 26(f)(4): The parties anticipate seeking a stipulated protective order
4 under Rule 26(c) regarding the use and dissemination of documents or information,
5 which any party believes is confidential and/or proprietary.

6 Rule 26(f)(5): The parties believe that the limited number of interrogatories
7 pursuant to Rule 33(a) is insufficient and that each will need up to 75
8 interrogatories to complete written discovery. The parties do not believe that any
9 additional changes to the limitations on discovery should be made nor that other
10 limitations should be set.

11 Rule 26(f)(6): The parties at this time do not believe that additional orders
12 under Rules 16(b) and (c) are necessary.

13 **E) Trial Estimate**

14 The parties believe the trial will take three weeks. All parties have requested
15 a jury trial.

16 **F) Proposed Dates**

17 While Plaintiffs would like to resolve this case expeditiously, due to the
18 scope of discovery that is necessary, Plaintiffs believe that the trial date cannot be
19 reasonably set any earlier than mid-2009. Plaintiffs anticipate the need for over 40
20 depositions of third parties, many of which are multinational corporations.
21 Plaintiffs anticipate that many of these third parties will seek protective orders and
22 restrictions with the Court, thereby necessitating a slightly protracted deposition
23 and discovery schedule. As such, Plaintiffs propose the following dates:

- 24 1) Non-Expert Discovery Cut-Off: November 21, 2008
25 2) Initial Expert Reports Due: February 13, 2009
26 3) Rebuttal Expert Reports Due: February 27, 2009
27 4) Discovery Motion Cut-Off (Filing): March 23, 2009
28 5) Dispositive Motion Cut-Off (Filing): May 4, 2009

6) Final Pre-Trial Conference: June 15, 2009

7) Trial: July 6, 2009

McCain believes that the trial date can be reasonably set for mid-2008 and proposes the following dates:

8) Non-Expert Discovery Cut-Off: December 27, 2007

9) Initial Expert Reports Due: February 1, 2008

10) Rebuttal Expert Reports Due: February 22, 2008

11) Discovery Motion Cut-Off (Filing): March 24, 2008

12) Dispositive Motion Cut-Off (Filing): May 15, 2008

13) Final Pre-Trial Conference: June 20, 2008

14) Trial: July 21, 2008

G) Complex Case (L.R. 26-1(a))

The parties believe that this case is not complex and does not require any of Manual For Complex Litigation procedures.

H) Consent to Magistrate Judge

The parties do not consent to a Magistrate Judge.

I) Settlement (L.R. 26-1(c))

The parties have engaged in preliminary settlement negotiations. Although a resolution has not been reached, the parties believe that a settlement is possible.

Pursuant to Local Rule 16-15.4, the parties prefer Settlement Procedure No. 3, whereby the parties shall participate in a non-judicial dispute resolution proceeding, namely, private mediation.

J) All Other Matters

There are no other matters at this time.

Respectfully submitted,

DATED: January ____, 2007

BUCHALTER NEMER
A Professional Corporation

By: RICHARD P. ORMOND
Attorneys for Plaintiff and Counterclaim
Defendant Argent Mortgage Company, LLC

DATED: January 22, 2007

BAKER & HOSTETLER LLP

By: LISA L. CARTEEN
Attorneys for Plaintiff and Counterclaim
Defendant Team Rahal, Inc.

DATED: January ____, 2007

PELOSI WOLF EFFRON & SPATES LLP

By: JOHN PELOSI
Attorneys for Defendant and
Counterclaim Plaintiff Edward McCain

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6 Attorneys for Plaintiff and Counterclaim Defendant,
Argent Mortgage Company, LLC

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 ARGENT MORTGAGE
COMPANY, LLC, a California
12 limited liability company,

13 Plaintiff,

14 vs.

15 EDWARD MCCAIN, an individual,
16 Defendant.

17
18 AND RELATED
COUNTERCLAIMS

Case No. SACV 06-749 CJC (RNBx)

Judge: Hon. Cormac J. Carney

PLAINTIFF ARGENT MORTGAGE
COMPANY'S RULE 26(a)(1)
INITIAL DISCLOSURES

Scheduling Order: January 29, 2007

Trial Date: Not Set

19 Plaintiff and Counterclaim Defendant Argent Mortgage Company, LLC
20 ("Argent"), by its attorneys, makes the following initial disclosures pursuant to Rule
21 26(a)(1) of the Federal Rules of Civil Procedure.

22 These disclosures are based on information reasonably available to Argent as
23 of this date. By making these disclosures, Argent does not represent that it is
24 identifying every document, tangible thing or witness possibly relevant to the
25 Complaint or Counterclaims. Nor does Argent waive its right to object to
26 production of any document or tangible thing disclosed on the basis of any
27 privilege, work product doctrine, undue burden, relevancy or any other valid
28 objection. Because discovery is ongoing, Argent reserves the right to amend or

1 supplement these disclosures as necessary or as new information becomes known.

2 (A). **Identification of Persons** - The name, address and telephone number
3 of each individual likely to have discoverable information that the disclosing party
4 may use to support its claims or defenses, unless solely for impeachment,
5 identifying the subjects of the information.

6 Response: See Addendum A.

7 (B). **General Description of Documents** - A copy of, or a description by
8 category and location of, all documents, data compilations, and tangible things in
9 the possession, custody, or control of the party that the disclosing party may use to
10 support its claims or defenses, unless solely for impeachment, identifying the
11 subjects of the information:

12 Response: Argent identifies:

- 13 (a) Documents and things related to Argent's sponsorship of Team Rahal,
14 Inc. ("Rahal") and Danica Patrick;
- 15 (b) Documents and things related to Argent's purported Agency
16 Agreement with Mark Borchetta;
- 17 (c) Documents and things related to Argent's alleged licensing of
18 photographs of Danica Patrick from Edward McCain;
- 19 (d) Documents and things related to Argent's alleged design, creation,
20 publication, use and/or distribution of materials relating to Rahal
21 and/or Danica Patrick; and

22 The above are in the possession, custody or control of Argent and/or
23 Argent's attorneys of record. Argent intends to seek a protective order prior to
24 producing any confidential, protected or privileged documents and/or things.

1 (C). Relief - A computation of any category of damages claimed by the
2 disclosing party, making available for inspection and copying as under Rule 34 the
3 documents or other evidentiary material, not privileged or protected from
4 disclosure, on which such computation is based, including materials bearing on the
5 nature and extent of injuries suffered.

6 Response: Not applicable to Argent at this time.

7 (D). Existence of Insurance Agreement - For inspection and copying as
8 under Rule 34 any insurance agreement under which any person carrying on an
9 insurance business may be liable to satisfy part or all of a judgment which may be
10 entered in the action or to indemnify or reimburse for payments made to satisfy the
11 judgment.

12 Response:

13 Argent is not aware of any applicable insurance agreement at this time.
14

15 DATED: January 22, 2007

BUCHALTER NEMER
A Professional Corporation
RICHARD P. ORMOND

17
18 By: 

RICHARD P. ORMOND

Attorneys for
Argent Mortgage Company, LLC

20 BN 1103974v1
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ADDENDUM A

NAME	AREA OF KNOWLEDGE	ADDRESS
All individuals listed by Rahal and McCain in their Rule 26(a)(1) disclosures	See Rahal's and McCain's Rule 26(a) Disclosures	See Rahal's and McCain's Rule 26(a) Disclosures
Argent (Persons Most Qualified)	Sponsorship of Rahal; alleged acquisition, possession, use and/or distribution of photographs of Rahal and/or Danica Patrick; alleged license(s) with McCain; purported agency relationship with Mark Borchetta; and other relevant facts.	c/o Argent's counsel
Johanna Padberg, former Vice President of Marketing, Argent	Sponsorship of Rahal; alleged acquisition, possession, use and/or distribution of photographs of Rahal and/or Danica Patrick; alleged license(s) with McCain; purported agency relationship with Mark Borchetta; and other relevant facts.	c/o Argent's counsel
Rahal (Persons Most Qualified)	Argent's sponsorship of Rahal; alleged acquisition, possession, use and/or distribution of photographs of Danica Patrick by Argent, Rahal or any third party; Advertising and promotion of Argent's sponsorship of Rahal and/or Danica Patrick; any communications with Mark Borchetta; and other relevant facts.	c/o Rahal's counsel
Edward McCain	Photographs of Danica Patrick; McCain's alleged ownership and license of copyrights in photographs of Danica Patrick; all communications and/or negotiations with Mark Borchetta; all communications with Rahal, Argent and/or third parties related to the creation, acquisition, possession, distribution or use of photographs of Danica Patrick; alleged acquisition, possession, use and/or distribution of photographs of Danica Patrick; Registration No. VAU-564-275; McCain's allegations of copyright infringement; damages allegedly incurred; and other relevant facts.	c/o McCain's counsel

1 John Pelosi, Esq.	Photographs of Danica Patrick; McCain's alleged ownership and license of copyrights in photographs of Danica Patrick; all communications and/or negotiations with Mark Borchetta; all communications with Rahal, Argent and/or third parties related to the creation, acquisition, possession, distribution or use of photographs of Danica Patrick; alleged acquisition, possession, use and/or distribution of photographs of Danica Patrick; Registration No. VAU-564-275; McCain's allegations of copyright infringement; damages allegedly incurred; and other relevant facts.	Pelosi Wolf Effron & Spates LLP, 233 Broadway, 22nd Floor, New York, New York 10279, (212) 334-3599
9 Mark Borchetta, President, Borchetta Marketing Group	Agency agreement and relationship with Argent; creation and development of advertising campaign to promote Argent's sponsorship of Rahal and/or Danica Patrick; alleged acquisition, possession, use and/or distribution of photographs of Danica Patrick; all communications and negotiations relating to photographs of Danica Patrick; McCain's alleged ownership and/or license of the alleged copyrights in photographs of Danica Patrick; McCain's allegations of copyright infringement; and other relevant facts.	25020 Avenue Stanford, Suite 100, Valencia, California, 91355, (661) 977-7464
15 Brian Girecky, Production Coordinator, Borchetta Marketing Group	Agency agreement and relationship with Argent; creation and development of advertising campaign to promote Argent's sponsorship of Rahal and/or Danica Patrick; alleged acquisition, possession, use and/or distribution of photographs of Danica Patrick; all communications and negotiations relating to photographs of Danica Patrick; McCain's alleged ownership and/or license of the alleged copyrights in photographs of Danica Patrick; McCain's allegations of copyright infringement; and other relevant facts.	25020 Avenue Stanford, Suite 100, Valencia, California, 91355, (661) 977-7464
22 Time Warner, Inc., Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	1 Time Warner Center N.Y., N.Y. 10019
24 USA Today, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	7950 Jones Branch Dr. Mclean, Va. 22108
26 Toyota Motor Sales, U.S.A., Inc., Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	19001 S. Western Ave. Torrance, CA. 90509

1	Pioneer Electronics (USA), Inc., Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	2265 E. 220th St. Long Beach, CA. 90810
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3	Indy Mens Magazine, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	8500 Keystone Xing Indianapolis, IN. 46240
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5	People Magazine, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	Rockefeller Center Time & Life Bldg N.Y., N.Y. 10020
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7	Sports Illustrated, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	2 Part Avenue N.Y., N.Y. 10016
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9	Norwalk Furniture, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	100 Furniture Pkwy Norwalk, OH 44857
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11	Speedgear.com, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	707 Fenmore Rd. Marmonck, NY 10543
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13	Indy Racing League, LLC, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	4565 W. 16th St. Indianapolis, IN. 46222
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15	Centrixx Financial Grand Prix of Denver, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	6782 Potomac St. Englewood, CO 80112
16			
17	American Le Mans Series LLC (owner of Americanlemans.com), Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	1394 Broadway Ave. Braselton, GA 30517
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19	Le Mans Magazine, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	1394 Broadway Ave. Braselton, GA 30517
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21	IndyMotorSpeedway.com, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	Daniel Vielhaber 141 E Beechwood Ln Indianapolis, IN 46227
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1	Motorsport.com, Inc. , Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	209 Ridgeland Rd, Tallahassee, FL 32312
2			
3	National Ledger, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	P.O. Box 1212 Apache Junction, AZ 85217
4			
5	ESPN, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	545 Middle St. Bristol, CT. 06010
6			
7	St. Petersburg Times, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	490 First Avenue South St. Petersburg, FL 33701
8			
9	WomanMotorist.com, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	2419 E. Harbor Blvd., #127 Ventura, CA 93001
10			
11	Consumer Electronic Show (ces.org; CEA.ORG) , Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	2500 Wilson Blvd Arlington, VA 22201
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13			
14	Motor Racing TV (motorracing.tv) , Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	Afferent Media 188 Woodland St. Balgowlah, NSW 2093 Sydney, Australia
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17	German Auto Press, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	Unknown at this time.
18			
19	Presstext Austria (Presstext Nachrichtenagentur GmbH) , Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	Josefstaedter Strasse 44 A-1080 Wien, Austria
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21			
22	German Auto, Persons Most Qualified	Acquisition, receipt, possession, distribution, and/or use of photographs of Danica Patrick; and other relevant facts.	Unknown at this time.
23			

SERVICE LIST

ARGENT MORTGAGE COMPANY, LLC, etc., et al.
 v. EDWARD McCain, etc.
 USDC Case No. SACV0406-749 CJC (RNBx)

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